

The Gazette of India



EXTRAORDINARY

PART II—Section 3

PUBLISHED BY AUTHORITY

No. 77] NEW DELHI, SATURDAY, APRIL 4, 1953

ELECTION COMMISSION, INDIA

NOTIFICATIONS

New Delhi, the 30th March 1953

S.R.O. 632.—WHEREAS the election of Shri Jitendra Nath Lahiri, of Battala Lane, Post Office Serampore, District Hooghly, as a member of the West Bengal Legislative Assembly from the Serampore constituency of that Assembly, has been called in question by an election petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Dinendra Nath Bhattacharya of Jaganath Ghat Lane, Post Office Rishra, District Hooghly, West Bengal;

AND WHEREAS the Election Tribunal appointed by the Election Commission in pursuance of the provisions of section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission;

NOW, THEREFORE, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, WEST BENGAL

ELECTION PETITION No. 220 OF 1952

ELECTION CASE No. 8 OF 1952 OF WEST BENGAL.

CORAM

Sri S. C. Ray Chaudhuri, M.A., LL.B.—*Chairman.*

Sri M. N. Gan, M.A., LL.B.

Sri Sudhir Kumar Bhose, M.Sc., LL.B. *Members of the Tribunal.*

In the matter of an Election Petition under section 81 of the Representation of the People Act, 1951.

AND

In the matter of election of Sri Jitendra Nath Lahiri, to the West Bengal Legislative Assembly from Serampore Assembly Constituency.

AND

In the matter of Dinendra Nath Bhattacharya, residing at Jaganath Ghat Lane, post office Rishra, district Hooghly (Office address—95, Subhas Avenue, post office serampore, district Hooghly—*Candidate Petitioner.*

Versus

(1) Jitendra Nath Lahiri, residing at Battala Lane, post office Serampore, district Hooghly.

(2) Kanailal Goswami, residing at Raja K. L. Goswami Street post office Serampore, district Hooghly.

(3) Narendra Kumar Bandopadhyay, residing at Kalitola, post office Rishra, district Hooghly.

(4) Dharmadas Sil Dewanji Street, post office Rishra, district Hooghly.

- (5) Lakshmi Kanto Bandopadhyay, Kalitala, post office Rishra, district Hooghly.
 (6) Panchugopal Nag, Khatirbazar Lane, post office Rishra, district Hooghly.
 (7) Panchugopal Bhaduri, Beniapara, post office serampore, district Hooghly.
 (8) Lalit Mohan Bhattacharya, Kalinath Bhattacharya Lane, post office Serampore, district Hooghly.
 (9) Sankari Prosad Mukhapadhyay, Goukhana Road, post office Serampore, district Hooghly—Respondents.

FOR PETITIONER—

Sri Sadhan Gupta—Counsel.
 with

Sri Shiv Krishna Dutt.

Sri Bimal Kumar Dutt—Advocates.

For Respondent No. 1—

Sri S. Chaudhuri—Counsel.

Sri Purnendu Sekhar Basu—Advocate.

with

Sri Arabinda Sinha,

Sri Sila Prasanna Sarkar.

Sri Nut Behari Dutt—Pleaders.

FOR RESPONDENT NO. 7—

Sri Arun Prokash Chatterjee—Advocate.

The 24th March, 1953.

JUDGMENT

The election to the West Bengal Legislative Assembly from the Serampore Assembly Constituency has been called in question on various grounds by presenting an Election Petition under Section 81 of the Representation of the People Act, 1951. The Petitioner and the Respondents were ten duly nominated candidates, three of whom, *viz.*, the Petitioner and the Respondents Nos. 8 and 10, withdrew their candidature. The remaining seven contested and polled votes as follows:—

Respondent No. 1 Jitendra Nath Lahiri	...	...	10,912 votes.
Respondent No. 7 Panchugopal Bhaduri	...	...	10,268 votes.
Respondent No. 2 Kanailal Goswami	...	...	2,422 votes.
Respondent No. 3 Narendra Kumar Bandopadhyay	...	...	745 votes.
Respondent No. 4 Dharmadas Sil	...	...	172 votes.
Respondent No. 5 Lakshmi Kanto Bandopadhyay	...	...	190 votes.
and			
Respondent No. 6 Panchugopal Nag	...	...	71 votes.

The election took place on 9th January, 1952 and the votes were counted on 23rd January, 1952. The Respondent No. 1 having secured a majority of the valid votes was declared duly elected. He fought the election with Congress ticket. The Respondent No. 7 Panchugopal Bhaduri who secured the next highest number of votes, was a Communist candidate. He was defeated by a narrow margin. The Petitioner Dinendra Nath Bhattacharya also got nomination of the Communist party. He is challenging the election for the benefit of the Communist candidate Panchugopal Bhaduri raising numerous objections, as stated below, to have the election of the returned candidate declared void.

The material allegations *inter alia* are:

After the polling the ballot boxes were kept by the Returning Officer (S.D.O., Serampore) in the Serampore Court building for safe custody under the guard of an armed sentry. On 12th January, 1952 the armed sentry on guard duty died in mysterious circumstances of gun shot. Next morning request was made on behalf of Panchugopal Bhaduri to the Returning Officer to grant permission to see if the ballot boxes were safe and untampered, but that prayer was flatly refused. Thereafter before the date of counting, the ballot boxes and their seals were tampered, with the connivance of the Returning Officer who was influenced by Sri Atulya Ghose, President, W.B.P.C.C. and Sri Bejoy Singh Nahar, Secretary, W.B.P.C.C. and others on behalf of and in the interest of the returned candidate Jitendra Nath Lahiri and many ballot papers were removed from ballot boxes of other candidates to the ballot boxes of the said Jitendra Nath Lahiri.

Before the commencement of counting on 23rd January, 1952, protest was lodged by the election agent of Panchugopal Bhaduri for arranging simultaneous counting of votes in four different rooms on 35 separate tables, but the Returning Officer paid no heed to such protest, consequently neither the counting agent nor the election agent of the Respondent Panchugopal Bhaduri could see the counting, nor the Returning Officer could supervise the same.

Contrary to the provisions of the law, Government servants, Kedareshwar Bangrjee, Kalachand Bandopadhyay and Dulal Bandopadhyay who actively canvassed for votes on behalf of the Respondent Jitendra Nath Lahiri during the election, were appointed as counting assistants and Mr. S. K. Das Gupta, Sub-Magistrate, a tenant and an intimate friend of the said Jitendra Nath Lahiri was illegally appointed as Officer in Charge of the Checking party in the counting of votes.

The checking of the serial numbers of ballot papers found in the ballot boxes, with the serial numbers of ballot papers issued from each booth, which was being done, was abruptly discontinued, in spite of protest, when the ballot papers of Jitendra Nath Lahiri were counted, in order to avoid the possibility of rejection of any ballot paper not bearing the correct serial number.

The Returning Officer refused to reject many forged ballot papers found in the ballot boxes of the Respondent Jitendra Nath Lahiri in spite of repeated requests to the election agent of the Respondent Panchugopal Bhaduri.

If the provisions of the Representation of the People Act, 1951 had been complied with before and during the counting of votes, the Respondent Panchugopal Bhaduri would have been found to have polled the largest number of valid votes and as such there is a fit case for re-count of votes.

There are further allegations that there has not been a free election by reason of corrupt practices of undue influence extensively prevailing at the election and also by reason of coercion or intimidation exercised and resorted to as against Muslims and Non-Bengali labourers to induce them to vote in favour of the Congress candidate and to refrain from voting for the Respondent Panchugopal Bhaduri and that the result of the election has been materially affected by improper acceptance of void votes cast in favour of Jitendra Nath Lahiri and improper refusal of valid votes cast in favour of Panchugopal Bhaduri.

A long list of corrupt practices has been given with the Election Petition. Names of several canvassers who are alleged to have threatened the Muslim and Non-Bengali electors residing in the bustees at Rishra, Mahesh and Serampore, have been mentioned. The Muslim electors were compelled to vote for Jitendra Nath Lahiri as they were threatened that they would be driven away to Pakistan if they voted otherwise. The Non-Bengalee and refugee electors were intimidated that if they did not vote for the Congress nominee their ration cards would be cancelled and they would be deprived of rations. The mill-hands were threatened that they would be deprived of their jobs and would be driven to their native places. Allegations have further been made that at certain polling booths the agents of the Respondent Jitendra Nath Lahiri applied for ballot papers in the names of other persons and managed to cast false votes in the names of numerous electors; and that a large number of vehicles including motor cars and rickshaws were hired and procured by the Respondent Jitendra Nath Lahiri himself or by his agents for conveyance of electors to and from polling stations on the day of polling. The return of election expenses submitted by the Respondent Jitendra Nath Lahiri has been challenged as various expenditure actually incurred were not shown therein.

Prayers have accordingly been made for a declaration that the election of the Respondent Jitendra Nath Lahiri is void, as the result of the election has been materially affected by the corrupt and illegal practices and for a further declaration that the Respondent Panchugopal Bhaduri has been duly elected securing a majority of the valid votes.

At the time of hearing the learned Counsel for the Petitioner gave up certain grounds of objection relating to false voting and submission of incorrect return of election expenses.

The Respondent No. 1 Jitendra Nath Lahiri contests the case. All the material allegations questioning the validity of the election on the grounds of tampering the ballot boxes and their seals, removal of ballot papers from other ballot boxes to those of the said Respondent, the alleged protest against holding of countings in 4 different rooms on 35 separate tables, illegal appointments of the counting assistants and Officer-in-Charge of Checking party and recourse to corrupt practices of bribery and undue influence and of exercise of coercion and intimidation upon Muslims and Non-Bengalee voters to induce them to cast votes in favour of the said Respondent and to refrain from voting for the Respondent Panchugopal Bhaduri

have all been categorically traversed. The further allegations of applying for ballot papers in the names of other persons in order to cast false votes in favour of the Respondent, of submission of incorrect return of election expenses, and of hire of transport or conveyance of electors to and from polling stations have also been emphatically denied.

At the time of hearing the following amended Issues have been pressed for decision.

ISSUES

1. Was the election wholly void there not being a free election by reason of the alleged corrupt practices of undue influence extensively prevailing during election?
2. Was the election wholly void for not there being a free election by reason of coercion or intimidation alleged to have been exercised or resorted to, by, at the instance of or with the connivance of the returned candidate Jitendra Nath Lahiri or his agent?
3. Has the result of the election been materially affected on account of major corrupt practices within the meaning of Section 123 sub-sections (2), (6) & (7) or minor corrupt practices within the meaning of Section 124 sub-sections (1) & (4)?
4. Has the result of the election been materially affected by the alleged improper reception of any vote or by the reception of any vote which is void, or by any non-compliance with the provisions of the Constitution or of the Representation of the People Act, 1951, within the meaning of Section 100 (2) (c) of the Act?
5. What relief, if any, is the petitioner entitled to?

DECISION

Issues Nos. 1 & 2.—The Election Petition covers a very wide range. In paragraph 23 of the Petition there is the general allegation that there has not been free election by reason of the fact that corrupt practice of bribery and undue influence extensively prevailed, and in paragraph 24 the election is questioned on the grounds that coercion and intimidation being exercised and resorted to as against Muslims and Non-Bengalee workers, they were induced to vote for Jitendra Nath Lahiri and to refrain from voting in favour of Panchagopal Bhaduri. In view of these allegations Issues Nos. 1 & 2 have been raised. Section 83 of the Representation of the People Act, 1951, enjoins that a list of full particulars of any corrupt or illegal practice as alleged must accompany the election petition giving as full statement as possible as to the names of the parties alleged to have committed such corrupt or illegal practice and the date and place of the commission of each such practice. To comply with this mandatory provision of law, a List of Corrupt Practices has been given Paragraph 1, sub-paragraphs (a) to (f) of the said list refer to the undue influence caused by general intimidation to Muslims and Non-Bengalee voters residing at Rishra, Serampore and Mahesh bustees and also in villages Mollaberrey and Melki. Sub-paragraphs (g) and (h) refer to threats in general to Muslims and Non-Bengalee electors within the Constituency, and sub-paragraph (i) refers to intimidation to Muslims and Non-Bengalee refugee electors generally, without any reference, to date and place. Their being no specific case of bribery in the list, the charge of bribery was given up and Issue No. 1 was amended expunging the word "bribery" (*vide* Order, dated 11th October 1952). Evidence has only been led attempting to prove undue influence by intimidation to Muslims and Non-Bengalee electors residing at Rishra and Serampore bustees and in villages Mollaberrey and Melki and also to refugee electors residing at Bungor colony at Serampore. Common evidence is adduced on both the Issues No. 1 & 2 and so they are conveniently discussed together.

No case is made during trial to show corrupt practice of undue influence extensively prevailing at the election within the meaning of Section 100(1) (a) of the Representation of the People Act, 1951. Issue No. 1 is accordingly given a go-by.

The question that remains for consideration is, whether on account of intimidation alleged to have been exercised or resorted to by Jitendra Nath Lahiri and/or by his agents to induce the Muslim and Non-Bengalee electors of certain limited areas and the refugee electors of a particular colony to vote for the Congress candidate and to refrain from voting for the Communist candidate, constituted such a corrupt practice within the meaning of Section 123(2) of the Representation of the People Act, 1951, as to make the election void.

The Constituency is a very big one, the total number of electors being about 52,000 as we get from the Respondent No. 1. The number of electors in the bustee at Rishra and Serampore as stated in the list of Corrupt practices given with the Election petition may be less than 10,000 but no evidence worth the name has been adduced on this point. The total number of votes polled was 24,780. The election was fought on party lines. The real contest was between the Congress candidate Jitendra Nath Lahiri and the Communist candidate Panchugopal Bhaduri, the former securing 10,912 votes and the later 10,268 votes, the difference being 644 votes. Next in the list was the Jana Sangha candidate Kanailal Goswami who secured 2,422 votes. There was thus neck to neck fight between the Congress candidate and the Communist candidate. Every candidate is interested to win for himself the seat and it is essential for him to properly organise the election campaign. In election on party lines the party programme and the influence of the party over the electorate become the first and most important thing for consideration by the electors. Then comes the personal qualifications of the candidates as the second great means of influencing the voters. Jitendra Nath Lahiri had the backing of the strong Congress party which was and still is in power. The Congress was in charge of the administration of the country and the electors specially the Muslims, Non-Bengalees and the Refugees who are said to have been unduly influenced knew well how they fared under the Congress Government. The Congress creed, as disclosed in evidence, is Hindu-Muslim unity and removal of untouchability. The Communist party contested the election for the first time in this country to gain power. It is not in evidence what propaganda was made on behalf of the Communist party. Then, as regards the personal qualifications the general principle is that a person with higher qualifications is bound to carry a greater weight with the voters. The Congress candidate Jitendra Nath Lahiri after obtaining First class Honours in Chemistry in B.Sc. Examination of the Calcutta University went to America in 1912 and took his M.Sc Degree in Natural Science from the University of California. He travelled in England, France, Germany, Italy and Switzerland and then returned to India in 1915. From 1916 he was detained under Regulation III of 1818 for 4½ years. Again during 1942 movement he was under home restriction for 1 year. He has a Belting Works Factory at Serampore. He was formerly the Vice-Chairman of the Serampore Municipality. It has been obtained from R.W. 6 Sibaprasanna Sarkar, Pleader, Serampore, in cross-examination, that the Communist candidate Panchugopal Bhaduri stood fourth in the Intermediate Examination in Science with Additional subject, passed B.Sc. with Honours or Distinction and obtained Third class M.A. Degree in Economics while under detention. He was in the Congress till 1944 when the Communist party left the Congress. He was formerly the Secretary of the Sub-divisional Congress Committee and Assistant Secretary of the Bengal Provincial Congress Committee. He was a Commissioner of the Serampore Municipality. He had been in jail for a long time on account of his political activities. While under detention he became paralytic, the lower part of his body being completely paralysed and in May or June 1948 he was released from jail for that reason. In October 1952 he left for Moscow for his treatment. He was bed-ridden during the election campaign. These relative qualifications of the candidates could not remain unknown to at least some of the electors.

The Petitioner attempts to make out a case of general intimidation restricted to certain classes of voters residing in particular areas. No case of threat to any individual voter in order to interfere with the free exercise of his right of franchise has been made in the petition. The alleged intimidation as stated by the witnesses on Petitioner's side may be summarised as follows:—Muslim voters were threatened that if they did not vote for the Congress they would have to go to Pakistan and their ration cards would be cancelled depriving them of their ration; the Non-Bengalee voters other than Muslims were alleged to have been threatened by the agents of the Congress candidate in the similar strain, viz., that they would be deprived of their jobs, they would have to leave for their native places and their ration cards would be cancelled, if they did not vote for the Congress. Such story of undue influence by intimidation is emphatically denied by the Respondent No. 1. His case is, that he did not go to Mufassil in connection with his election campaign as the condition of the Mufassil roads was so bad that one could not travel in motor car. He adds that he visited the principal residents of every neighbourhood of Serampore and Rishra and only informed them about his candidature with Congress ticket requesting for support, but he did not canvass from door to door. He has examined some of the persons named in the List of Corrupt Practices to deny the allegations of canvassing by them exercising undue influence of intimidation. He cannot recognise even some of the persons described in the List of Corrupt Practices as his canvassers. Before discussing the evidence the question of probability deserves some consideration. In his individual capacity Jitendra Nath Lahiri could not regard himself as such an important personage that he could be presumptuous enough to brag that he had such

influence that he could drive away the Muslims and Non-Bengalee electors from West Bengal or to stop ration of any voter, be he a Muslim or a Non-Bengalee or a refugee. Even if such idle threats by Jitendra Nath Lahiri or his agents be conceivable, the voters like Muslims, Non-Bengalees and Refugees could not be credulous enough to pay any heed to such intimidation. The class of voters referred to are mostly workers employed in the mills. The workers have their Unions. They follow generally the mandate of their Unions. It is difficult to believe that the judgment of such voters could be affected by any intimidation asking them to do anything contrary to the mandate of their Unions. Jiten Babu says in his evidence that after conversation with principal residents of Muslim bustees and Non-Bengalee Hindu bustees he came to learn that the Muslims and the Non-Bengalees were mostly Congress-minded. He has been corroborated by certain other witnesses as well. On the Petitioner's side there is no reliable evidence to establish that the voters of the type mentioned, decided to vote for the Communist and they changed their decision on account of any intimidation by Jitendra Nath Lahiri or his canvassers. One witness on the Petitioner's side, among the Muslim voters, P.W. 9 Romjan Ali attempts to make out such a case. He comes to say that Jitendra Nath Lahiri himself intimidated him that if he voted for the Communist he would have to go to Pakistan, so, though he had a mind to vote for the Communist he could not do it out of fear. He wants the Tribunal to believe that he gave his only room to Jiten Babu for opening the Congress Election Office there and he went to put up with another man. He admits that in the polling booth the ballot boxes were kept in a compartment screened by Purdas so that nobody could see from outside in which box he deposited his ballot paper and he could put his ballot paper in any of the ballot boxes according to his choice, but he already got so frightened on account of Congress propaganda that he could not exercise his discretion. The defence suggestion is that this witness is a Communist worker. Another Non-Bengalee witness P.W. 8 Ramnath Patta of Rishra bustee also comes to say that the electors were inclined to vote for "Lal Jhanda" but when the propaganda was made on behalf of the Congress they got frightened and decided to vote for the Congress. This witness also denies that he is a member of the "Lal Jhanda". He absented himself from his duties in the mill in order to adduce evidence in this case, losing his wages for three days. In the course of cross-examination he states that "several people came after casting votes and said that they voted for the pair of bullocks and we also decided to cast votes for the pair of bullocks. There was a Booth at Jamunatala where we did cast our votes. The compartment in which the ballot boxes were kept was surrounded by a screen and nobody could see from outside in which of the boxes the voting paper was deposited". No reliance can be placed on the evidence of these witnesses as to the original intention of the voters to support the Communist and then to change their views after the Congress propaganda. The story of undue influence by intimidation in the manner alleged seems to be improbable. The evidence of the alleged intimidation even if it could be deemed to have been exercised not in the individual capacity of Jitendra Nath Lahiri as a Congress candidate but as a Congress party propaganda, it may be analysed as follows: The Muslim and the Non-Bengalee electors were fully conversant of the advantages and disadvantages of the Congress administration and of the Congress policy and they might be warned that if the Congress be not returned to power evil days may fall on them. Such a propaganda might come under Section 123(2) Proviso (b) of the Representation of the People Act, 1951. No such definite case has been made as the Respondent No. 1 totally denies the story of intimidation. Of course, the Proviso referred to above might not be of any avail if there had been propaganda as alleged by certain witnesses that if the Communist party comes to power that party would drive away the said electors out of West Bengal depriving them of their rations. We need not discuss this question further in the absence of any such case of declaration of policy.

Let us analyse the evidence of the alleged intimidation with reference to the allegations in the List of Corrupt Practices. During trial evidence has been led on the Petitioner's side to prove intimidation to voters residing in Rishra bustee and Serampore bustee and in villages Mollabarrey and Melki, as also to the refugees residing at Bungor Colony within Serampore. In paragraph 1(e) of the List of Corrupt Practices mention has been made of Mahesh bustee, but no evidence has been adduced to prove any propaganda in the said bustee. In paragraph 1(i) of the List of Corrupt Practices a general statement appears about the refugee electors without any reference to place and date.

The evidence relating to Rishra bustee is adduced by the Petitioner himself and his witnesses P.W.1 Kewal Krishna Kapur, P.W.3 Kashi Nath Singh, P.W.4 Mohammad Hayat, P.W.8 Ramnath Patta and P.W.9 Ramjan Ali. Kewal Krishna Kapur, Kashinath Singh and Mohammad Hayat are not voters. None of them

discussed with anybody that they knew about the alleged intimidation. It remains a mystery how the Petitioner could discover that they would be able to help in this case. Kewal Krishna Kapur is out of employment and lives on the mercy of friends including P.W.3 Kashinath Singh. Kashinath in his anxiety to support the Communist goes so far as to say that he was so frightened that he canvassed for the Congress without getting any remuneration. He of course denies his association with the Communist party. Mohammad Hayat has lost his permanent job and is now working as a temporary hand in Willington Jute Mill. The evidence of these interested witnesses hardly deserves any credit. The evidence of the other two witnesses P.W.8 Ramnath Patta and P.W.9 Ramjan Ali have already been discussed. They are not witnesses who deserve the least reliance. All the witnesses say that they came paying travelling expenses from their own pocket. Of course the Petitioner submitted travelling bills of the witnesses after the closing of the hearing of the case.

Among the persons whose names have been mentioned as canvassers of Jitendra Nath Lahari in the Rishra bustee, R.W.5 Niranjan Singh and R.W.11 Ramsakal have been examined besides the Respondent himself. In para 1 (e) of the list of Corrupt Practices there is another name of Sarat Chandra Sahu. The Respondent says that Sarat Chandra Sahu canvassed for him in Rishra bustee, but he was his sympathiser only. That Sarat Chandra Sahu is said to have been recently murdered by some party. Niranjan Singh and Ramsakal totally deny that they canvassed for Jitendra Nath Lahiri or threatened the voters in the manner alleged. Niranjan Singh is a teacher in the Labour Welfare Centre in India Jute Mill. He has to attend his duties both in the morning and in the evening. From the Attendance Register of Welfare Centre the learned Counsel for the Petitioner shows that the witness did not attend his evening duties in the month of December. No explanation has been taken from him why he did not attend. Immediately before the election in the month of January 1952, he appears to have regularly attended evening classes. This witness became the Polling Agent of Sachindra Nath Chaudhuri, a candidate for a Parliamentary seat. Ramsakal is the Secretary of Harijan sevak Sangha at Rishra bustee. He says that there was election propaganda on behalf of the Congress in the bustee by a number of boys who passed through the bustee shouting slogans. Jiten Babu's evidence is that he came to know Ramsakal when he went to Harijan Sevak Sangha and informed him that he stood as a Congress candidate and requested him to vote for him. He did not ask Ramsakal to canvass for him and he did not know Niranjan Singh before summons was served on him in connection with this case. We do not see any reason to disbelieve the evidence of these witnesses. The Respondent No. 1 examines certain other witnesses to prove how his election campaign was carried on in Rishra bustee. R.W.4 Beharilal Sahu, a Commissioner of the Rishra Municipality has many tenants at Rishra bustee. He is a voter. He denies the story of canvassing and intimidation in the bustee in the manner alleged by the Petitioner. R.W.9 Ezazul Haque alias Dadul comes to deny the story of intimidation in Rishra bustee. His evidence is that there was free exercise of right of franchise by the electors in the bustee. He is a voter. He also says that boys went to canvas in the bustee for the Congress candidate Jiten Babu shouting slogans. He adds that some other people also shouted "Vote for Lal Jhanda". R.W.21 Abdul Shovan, a railway employee and a Commissioner of Rishra Municipality denies the story of threat by Jiten Babu or his agents. He is a voter. According to him three or four weeks before the election Jiten Babu went to their locality and told people that he stood for election as Congress candidate and requested them to support his candidature. Adverse remark has been made by the learned Counsel for the Petitioner against this witness on account of his want of knowledge that one Gouri Singh, uncle of R.W.5 Niranjan Singh is also a member of the committee of Vidyapith School, with him. That fact has very little significance. One other very old witness R.W. 22 Abdul Mia, who is also a voter, is examined to say that Jiten Babu did not threaten anybody in the bustee in the manner alleged. He has got 16 tenants in the bustee.

Regard being had to the evidence of all the witnesses we cannot accept the story of intimidation to voters in Rishra bustee as true.

Regarding canvassing in Serampore bustee the Petitioner examines only one witness, P.W. 22 Kanhaiyalal Sohani, besides himself. This Kanhaiyalal poses to be a canvasser of Jitendra Nath Lahiri. He was in the hospital when summons was served on him by one Provat Roy, a nephew of Panchugopal Bhaduri. He had no talk with anybody about the evidence he would adduce. Jiten Babu cannot recognise this Kanhaiyalal and he denies that he canvassed in Serampore

bustee accompanied by the said witness. The petitioner Dinendra Nath Bhattacharya (P.W.19) was the election agent of Tushar Kanti Chatterjee, the Communist candidate for the Serampore Parliamentary Constituency seat and canvassed for him in the Bustee. This Tushar Kanti is the elder brother of P.W.7 Kamal Chatterjee. The petitioner comes to say that during his election campaign for Tusharkanti Chatterjee, he noticed Jitendra Nath Lahiri accompanied by Natulal Shaw, Bistu Banerjee and Jiru canvassing and threatening the voters. This interested evidence cannot deserve much credit.

In paragraph 1 (b) & (f) of the List of Corrupt Practices several names have been given as canvassers of Jiten Babu in Serampore bustee including those mentioned by the petitioner in his evidence. Out of them R.W.8 Natulal Shaw, R.W.10 Santl Mitra, R.W.18 Bistu Charan Banerjee and R.W.24 Sk. Jiru have been examined in addition to certain other witnesses viz., R.W.3 Selkh Nabijan, R.W.16 Auaj Misin, R.W.17 Shewnandan Shaw and R.W.20 the Respondent himself, in connection with the election campaign at Serampore Bustee.

R.W.8 Natulal Shaw is a Commissioner of the Serampore Municipality and he is a man of means. He admits that he supported the Congress during election, but he never canvassed for Jitendra Nath Lahiri, either alone or accompanied by Jitendra Nath Lahiri, Bistu Banerjee, Monilal Sardar, Kaldin Pandey and Upen Guha, whose names have been mentioned in the List of Corrupt Practices. He totally denies the story of intimidation. He appears to be a reliable & respectable witness.

R.W.10 Santl Kumar Mitra is a Journalist, attached to 'Jana Sevak' as News Editor. His evidence is that he never canvassed for Jitendra Nath Lahiri accompanied by Bistu Charan Banerjee, Jiru and Fakir, and he did not take any part in the election campaign as it was not possible for him to do so attending to his duties at Calcutta. There is no reason to disbelieve this gentleman.

R.W.18 Bistu Charan Banerjee is a member of the Congress and also of I.N.T.U.C. As a representative of Indian Working Class he went to join the I.L.O. meeting at Geneva. He was in charge of Hooghly District of the West Bengal Section of United Council of relief and welfare and toured around the District with Miss Mridula Sarabai giving relief to restore confidence among the Muslims. He was in charge of the Congress election campaign in Serampore, but he made general propoganda for Congress during election and took necessary measures for the success of the Congress. He denies the story of intimidation to Muslim voters of Serampore bustee. He appears to be a very straightforward witness. There is no reason to doubt his veracity. It is improbable that he would indulge in activities which would undo the effect of the useful work previously undertaken by him.

R.W.24 Seikh Jiru denies the story of canvassing for Jiten Babu. Jiten Babu approached him and Fakir Mallick to canvass for votes but did not threaten anybody as his evidence discloses.

R.W.3 Selkh Nabijan adduces evidence to the effect that Jiten Babu and Sankari Babu went to the bustee and called Sukkur Mia and other including himself, and informed that he stood as Congress candidate and asked for their support, but never threatened the electors. It is obtained from him that Monilal Sardar, whose name appears in the List of Corrupt Practices, is a leader of Hindu Mahasabha and he canvassed in the bustee for the candidate Kanailal Goswami. He is a voter.

R.W.16 Auaj Misin is not a voter. He comes to say that there was no intimidation by Jitendra Nath Lahiri or his agents and it did not so happen that some voted out of fear and some did not vote at all on account of intimidation. As regards Congress propoganda he says that boys shouted slogans "Vote for Congress".

R.W.17 Shew Nandan Shaw also denies the story of intimidation by Jiten Babu or his agents. Jiten Babu once went to the bustee and called Sardars to inform them that he stood for election as a Congress candidate and requested them to vote for him. According to his evidence all the Hindustanis including himself are Congress minded.

R.W.20 Jitendra Nath Lahiri has given emphatic denial to the story of intimidation and canvassing in the manner alleged, accompanied by Natulal Shaw, Bistu Banerjee Shanti Mitra, Jiru and Fakir, or any one else. He visited the Sardars of the Bustee accompanied by Sankari Babu, the Assistant Secretary of the District Congress Committee, and asked for their support. He also says that Monilal Sardar, the leader of "Mahabir Dal" canvassed for Kanailal Goswami.

Considering all these evidence and regard being had to the probabilities and circumstances the story of intimidation in Serampore bustee cannot be believed.

Next comes the question of intimidation to refugees. There is a general statement in paragraph 1 (1) of the List of Corrupt Practices without any reference to time and place to the effect, that the Respondent Jitendra Nath Lahiri, his agents, namely Benoy Bose and others and other Congress men threatened the refugee electors systematically with cancellation of their ration cards if they failed to vote for the Congress nominee. Such vague statement can hardly be said to have satisfied the requirements of Section 83 (2) of the R. P. Act, 1951. The Petitioner has no personal knowledge of the facts stated and he does not say anything on the point. He verified the statement as one 'true to his information.' P.W. 6, Mahendra Nath Das is the only witness examined to prove the alleged intimidation to the refugees who have settled in a colony at Serampore, known as Bungor Colony. That colony, as it appears from his evidence, is outside the Serampore Municipal area, within Rajyadharpur Union. This is also clear from the evidence of R.W. 25 Bimal Kanti Ghose, Lecturer of the Physics Department in the Serampore College, who carried on Congress election campaign there. The witness Mahendra Das comes to say that Jiten Babu, accompanied by Benoy Bose, Proprietor of Ration Shop, personally canvassed in the colony and told the Secretary of the colony to ask the voters to vote for the Congress, but the Secretary refused to interfere in the free exercise of the right of franchise; and he further rejected a proposal of Jiten Babu to start a school for the education of the children of the refugees residing in the colony. It is in evidence that there is another school close to the colony and the Chairman of the Serampore Municipality has already started a new school within the colony. The story given by the witness deserves very little credit. He is a petty job-worker in a Silk Printing Shop. He did not disclose to anybody that he was conversant with such a piece of valuable information. He must either be a hired witness or vitally interested in the case of the Communists. The Secretary of the colony is not examined. The learned Counsel of the Petitioner complains that the Respondent has withheld the evidence of Benoy Bose. Benoy Bose's ration shop has no concern with the colony as admitted by the witness Mahendra Nath Das. It is no part of the duty of the Respondent to produce Benoy Bose as a witness in the absence of any evidence worth the name on the Petitioner's side to substantiate the allegation. The Respondent Jitendra Nath Lahiri asserts that he had never been to Bungor colony for election campaign, nor he had any occasion to make a proposal for starting a school there. The allegation of his propaganda in the colony accompanied by Benoy Bose or any other person has been totally denied. P.W. 25, Bimal Kanti Ghose who canvassed in the colony is a very respectable witness, whose evidence deserves credit. The story of threat by Jiten Babu to stop ration is rather preposterous. Bungor colony is outside the ration area, but only modified rationing was in force. Considering the evidence, the story of intimidation to the refugees cannot at all be believed.

Let us consider whether any undue influence by intimidation was exercised on the Muslim electors residing in the villages, Mollaberrey and Melki, as stated in paragraph 1(c) of the List of Corrupt Practices. On the Petitioner's side P.W. 16 Surendra Nath Mandal, P.W. 21 Dhananjay Khan and P.W. 23 Fanchkari Jana are examined on this point. None of these three witnesses is resident of Mollaberrey. Surendra Nath Mandal is a resident of Simla. Mollaberrey is 2 miles off from his house. He first says that Jiten Babu came in motor car and stopped on the road near his house for canvassing. Then says that he learnt that Jiten Babu had been to Mollaberrey where people assembled and so he rushed to Mollaberrey to see him. After making certain prevaricating statements the witness says that Jiten Babu went in his car to Mollaberrey without stopping at Simla and he had no talk with Jiten Babu and Jiten Babu left Mollaberrey before he returned from there. The next witness Dhananjay Khan, who is suggested to be a Communist, is a resident of Jagannathpur. He went to Mollaberrey to purchase paddy and straw and he noticed Jiten Babu holding a meeting there. He had no talk with anybody about what he knew. His evidence is equally worthless. Fanchkari Jana, the other witness also says that he went to purchase straw at Mollaberrey and saw Jiten Babu holding a meeting there. His evidence is that "Jiten Babu and others addressed the gathering asking to vote for the 'Raja', as during the last riot the Raja saved the people and if they did not vote for the Raja they would have to go to Pakistan. I do not know what was the result of such propaganda". This is another chance witness who did not inform anybody what he knew.

The Respondent Jitendra Nath Lahiri has totally denied any canvassing by him at Mollaberrey, as he could not go there, the condition of the road being very bad for travelling in motor car. He has examined R.W. 15, Pir Bux whose name appears in the List of Corrupt Practices. Pir Bux denies any campaign at Mollaberrey by Jiten Babu or by persons named Gobardhan Santra, Prankrishna Hati, Selkh Delu and Ajit Baidya

whose names also appear in the List of Corrupt Practices, in connection with the propaganda in village Melki. Regarding propaganda at Melki the petitioner examines two witnesses, namely, P.W. 10, Seikh Lokman and P.W. 11, Osthu Das. Lokman says in cross-examination "We are always in fear, but what could we do. We had fear before the election, during the election and after the election. The fear is on account of Hindusthan and Pakistan problem". He admits further in cross-examination that the village road is in a very bad condition, there being several ditches upto the height of a man on the road. According to him Lahiri Babu i.e., Jitendra Nath Lahiri, came to the village on foot. He has come to Court as one. Promotho Dutta gave him summons. It is in evidence that that Promotho Dutta is a Communist worker. He told one Pasupati Bannerjee, who was canvassing, that he would vote for the Congress as asked, as it was Congress Raj.

Jitendra Nath Lahiri denies wholly the story of canvassing by him in the village Melki. He does not know Gobardhan Santra, Prankrishna Hati, Seikh Dluu and Ajit Baidya.

Thus considering the evidence adduced we hold that no such intimidation has been proved which did interfere with the free election. The votes polled by the two candidates do not justify any inference that undue influence was exercised so as to interfere with the free exercise of the electoral right of voters.

These Issues are accordingly decided against the petitioner.

Issue No. 3.—In connection with the 1st Issue we have already decided that there has been no undue influence by intimidation interfering in any way with the free exercise of any electoral right of voters. The result of the election cannot therefore be deemed to have been materially affected on account of any major corrupt practice within the meaning of Section 123(2) of the R. P. Act, 1951. In the List of Corrupt Practices, para 1 (d) there is an allegation that the Muslim electors were threatened by telling them that "it was ordained in the Holy Quoran that they must vote for the party of the Government and if they fail they would be subjected to the wrath of Allah and would not go to Heaven." By such allegation a case of corrupt practice within the meaning of Section 123(2) Proviso (a)(ii) of the R. P. Act, 1951 has been hinted. No evidence on this point has been adduced. P.W. 15, Pir Bux, whose name appears in connection with this allegation, has been questioned in cross-examination on the point. His reply is "it is not a fact that I said to the Muslims that Quoran enjoins that votes should be cast in favour of the Government party, otherwise they would not be able to go to Behest. There is no connection between casting of votes and going to Behest". The Petitioner adduces no evidence while on the other hand there is denial by a person whose name has been mentioned in this connection. Accordingly there is no case under Section 123(2) Proviso (a)(ii) of the R. P. Act, 1951.

An Issue under Section 123(6) of the R. P. Act, 1951, has been raised in view of the vague allegation made in paragraph 20 of the Election Petition read with paragraph 3 of the List of Corrupt Practices. No specific case has been made in the body of the Petition that vehicles were hired by the Respondent to carry voters to the polling booths. Under Section 83(2) of the R. P. Act, 1951, a full statement of the names of the persons who committed such corrupt practices as agents of Jitendra Nath Lahiri and in which booths the voters were carried should have been specifically stated. The statement in the List of Corrupt Practices was verified by the Petitioner as one true to his information. In his anxiety to make out a case under Section 123(6) of the R. P. Act, 1951, he apparently forgot what case he made in his petition and wanted the Tribunal to believe an apparently concocted new story given in his evidence. He now says "I personally saw voters being taken to the booths in rickshaws. Many rickshaws were found carrying voters. Voters were carried in rickshaws to Rishra Anath Asram Booth, Presidency Jute Mill Booth, Hastings Canteen Booth, Mahesh H. E. School Booth and Bangeswari Cotton Mill Booth. I saw numerous rickshaws carrying voters, but I cannot exactly remember the number of rickshaws. I enquired from one or two rickshaw pullers their names and the names of the owners of the rickshaws pulled by them. I verbally complained to the Polling Officers that voters were being brought in rickshaws. Such complaints were made at Presidency Booth, Rishra Bengali School Booth and Hastings Canteen Booth. I personally raised objection. I did not mention in the Election Petition about the objection raised by me before the Polling Officers. I remembered the fact as I protested personally, when the Petition was drafted." If the petitioner had been in possession of all these facts at the time of the preparation of the election petition, the omission to mention them in the body of the main petition or in the list of corrupt practices cannot but be too strongly deprecated. Apparently he has very little regard for truth. His object is evidently to fish out some possible material from which the

blank in his Election Petition may be filled up. It has been held that "the persons presenting an election petition are bound to tell the most they can at the time these particulars are given, and, at all events before the trial, to tell as much they can to put the sitting member and his counsel upon enquiry and to prevent surprise or expense. To deliver particulars which contain nothing but the names of the candidates and the character of the offence suggested and leave everything in blank and to attempt under them to fish out some possible material from which the blank may be filled up is an abuse of procedure." Khanna's Indian Election Cases, Vol. 1, Pages 118-119. In paragraph 5 of the list of corrupt practices given with the Election Petition, the petitioner craves leave to add to and amend the list, if and when fresh details of corrupt practices come to light. He did not either add or amend his list before the trial. It has been observed in Nanak Chand Pandit's Law of Elections at p. 358 that "where the petitioner made vague allegation that the respondent hired a number of hackney-carriages and other vehicles for the purpose of conveying his voters to various polling stations, without specifying instances, and merely alleging that, 'if on further enquiry further discoveries are made, then fresh particulars shall be duly added to the petition,' it was held that the petition shall contain a statement of concise form of material facts on which the petitioner relies and the particulars are the names of the persons whose vehicles were hired, the names of the persons who hired, the sums paid, the names of the voters who were carried and so forth." No such steps were taken in this case and the petitioner has attempted to fish out evidence to take the respondent No. 1 by surprise. The evidence adduced on this point hardly deserves any notice. The contention of the learned Counsel for the petitioner that the omnibus objection raised in paragraph 20 of the Election Petition, entitles the petitioner to adduce detailed evidence on the point, is not at all tenable in view of the law already discussed. However, a passing reference may be made to them. P.W. 5, Hiralal Shaw comes to say that he carried voters to Hastings Mill Booth and also to the Bengali School Booth from Netaji Subhas Road and Dewanji Street in Rishra and his rickshaw hire was paid by Jiten Babu. He did not tell anybody that he got his rickshaw hire from Jiten Babu, but still the petitioner could find him out to adduce such evidence. The respondent Jitendra Nath Lahiri emphatically denies the statements of the witness. Two other rickshaw pullers, P.W. 17, Rabi Das and P.W. 25, Netaji Charan Sarkar are examined to prove that Jiten Babu's son Ram Babu engaged their rickshaws to carry voters and they were paid their rickshaw fares by Ram Babu on subsequent dates. Jiten Babu's son, R.W. 23, Ram Chandra Lahiri who is the Manager of respondent's Belting Factory denies the story of hiring rickshaws of Rabi Das and Netaji Sarkar and paying them any fares. He adds that he did not take any part in connection with the election of his father. These rickshaw pullers cannot at all be believed in the circumstances of the case and in view of their evidence. Such evidence has been created for the purpose of this case. The petitioner goes further and examines two female witnesses P.W. 18, Kamalani Sarkar and P.W. 20 Angurbala Dasi to make out a case that those female voters were carried in rickshaws to the polling booths by Jiten Babu's man. Kamalani Sarkar's connection with Communists has sufficiently been established in cross-examination. She says that a girl came to her place to take her in a rickshaw to the polling station and the rickshaw was brought by the Congress party. The other witness Angurbala attempts to prove that Jiten Babu came to her house and told her that he would send rickshaw to take her to the polling station. She has got her brothers who do not come. She has been brought before the Tribunal by one Bechu who is said to be a Communist. Jiten Babu emphatically denies the facts alleged by these female witnesses. We cannot place any reliance on the evidence adduced in this connection.

Two of the witnesses P.W. 12, Ranjan Roy and P.W. 14, Joydeb Denki are examined to adduce evidence that they noticed Congress volunteers to escort female voters carried in rickshaws. In a room of the house of Ranjan Roy there was election office of the Communist candidate, Panchugopal Bhaduri. He says that he saw women being taken in rickshaws. He made no enquiry whether they were going and whether they were voters or not. But still he informed Panchugopal Bhaduri that voters were being carried in rickshaws and also communicated the fact to Kamal Chatterjee, P.W. 7. In spite of communication of such valuable informations to the persons who are interested in this election petition, nothing was stated in the said petition. Joydeb Denki is not a voter of the Serampore constituency. But still he waited near Chatra School Booth from 10 A.M. to 12 noon and again for an hour and a half in the afternoon to see that voters were being brought to the booths on rickshaws escorted by Congress volunteers. The interested evidence of that witness cannot at all be believed.

On the respondent's side evidence has been adduced that it was announced by the Congress that no arrangement of conveyance would be made to carry voters

to the polling booths. R.W. 12, Ashutosh Paul, Polling Agent at Chatra School Polling Booth, R.W. 19, Madhu Paul who was in charge of the Congress election campaign at Rishra, R.W. 20, Jitendra Nath Lahiri himself testify to this fact. There is absolutely no reason to disbelieve them. The learned counsel for the petitioner takes exception for not examining Sankari Babu who carried on the Congress election campaign and directed to make the announcement regarding vehicles. The evidence adduced on the respondent's side is more than sufficient as rebutting evidence to the belated stories set up by the petitioner. Examination of Sankari Babu by the Respondent is not at all deemed necessary to meet the petitioner's new stories set up at the time of trial, as contended by Sri Purnendu Sekhar Basu, Advocate for the Respondent No. 1.

Considering all these evidence the Tribunal cannot hold that there was any corrupt practice within the meaning of Section 123(6) of the Representation of the People Act, 1951.

There is a further objection of commission of corrupt practice under section 123(7) of the Representation of the People Act, 1951 which runs thus:—

“The incurring or authorising by a candidate or his agent of expenditure, or the employment of any person by a candidate or his agent in contravention of the Act or of any rule made thereunder”.

In paragraph 4 of the list of corrupt practices certain items of expenditure have been mentioned. In sub-para. (a) much higher expenditure than Rs. 7,000 has been alleged, but no evidence in support of this statement has been adduced. In sub-paragraphs (b), and (c) references have been made to the election meetings addressed by Sri Jawaharlal Nehru and Sri Jagjivan Ram. Expenses of such meetings declaring the Congress policy cannot be deemed to be expenditure which should be included in the account of election expenses submitted by the Congress candidate. These objections are not pressed. In sub-paragraph (d) mention has been made about payments to various clubs, but no evidence has been adduced and this objection has practically been waived. There is thus no case under section 123, sub-section (7) of the Representation of the People Act, 1951.

There are further objections in the list of corrupt practices under section 124(1) and (4) of the Representation of the People Act, 1951. According to our decision already recorded no case has been made out under section 124, sub-section (1) of the Act. The objection under sub-section (4) of the said section is not pressed at the time of trial. Such objections raised in paragraph 4, sub-paragraphs (e), (f) and (g) of the list of corrupt practices were given up by the learned counsel for the petitioner before the commencement of the trial.

This issue is thus disposed of. The decision of the Tribunal is that the result of the election has not been materially affected on account of any major or minor corrupt practices.

Issue No. 4.—Serious allegations have been made against the Officers-in-Charge of the election alleging: (a) that the ballot boxes were tampered and ballot papers were removed from the ballot boxes of other candidates to those of Jitendra Nath Lahiri, (b) that counting of votes was held in spite of protest in a manner contravening the provisions of the law, (c) that canvassers of Jitendra Nath Lahiri were appointed counting assistants and an intimate friend and tenant of the said Congress candidate was selected as the Officer-in-Charge of the Checking Party, (d) that serial numbers of ballot papers were not checked while counting the votes of Jitendra Nath Lahiri, (e) that forged ballot papers were not rejected in spite of repeated requests by the election agent of Panchugopal Bhaduri, and (f) that there was improper reception of void votes cast in favour of Jitendra Nath Lahiri and improper refusal of valid votes cast in favour of Panchugopal Bhaduri.

It has been contended that the result of the election has been materially affected by such illegal acts and non-compliance with the provisions of the Representation of the People Act, 1951 and of the Rules and Orders made thereunder. Paragraphs 7, 10, 11, 12, 13, 21 and 22 of the Election Petition refer to these charges.

(a) In paragraph 7 allegations have been made that the Returning Officer, being influenced by Sri Atulya Ghose, President of W.B.P.C.C. and Sri Bejoy Singh Nahar, Secretary of the said Congress Committee connived in the act of tampering with the ballot boxes, and the removal of many ballot papers cast in favour of other candidates into the ballot boxes allotted to the Respondent, Jitendra Nath Lahiri. It is extremely unfortunate and highly objectionable that such wild reckless verified statements could be made in the election petition. It is all the more regrettable that such contentions were pressed in the absence of an iota evidence merely basing arguments on suspicions and conjectures, which were set up as

circumstantial evidence. Suspicion is no substitute for proof and circumstantial evidence must be such that they cannot but lead to the irresistible conclusion regarding the existence of the alleged state of things. Far-fetched speculation cannot even justify any contention of such a serious nature. Without disclosing anything in the Election Petition how the ballot boxes were or could be tampered and why an inference of tampering should be drawn, attempt has been made during the trial to place certain incidents before the Tribunal.

The Polling took place on 9th January, 1952. The Returning Officer was in charge of 4 Constituencies, viz., Serampore, Uttarpara, Bhadreswar and Singur. The ballot boxes were deposited in the Ejlal room of the Subdivisional Officer, Serampore, who is the Returning Officer, for safe custody. The room was securely locked and guarded by armed sentry. A map of the Court building is in evidence before this Tribunal with another rough sketch produced by the Respondent No. 1 and referred to in the evidence by the witnesses. The ballot box room was in the extreme north side of the Court building. It was guarded by an armed sentry, specially posted on a verandah to the north of the said room. The Sub-treasury is on the extreme south side of the building. To the south of that room there is another verandah on which the Treasury guard is posted. To the further south, near the Barrack of the armed guards there is another guard post where a different armed sentry remains on duty within the Court compound. The Returning Officer, Mr. M. M. Kushari, who has been examined as R.W. 13, proves that an additional armed guard was posted on the south-east corner of the Court building near a staircase leading to the first floor, when the ballot boxes were kept in the Court building for safe custody. Besides those armed guards on the different posts, certain other armed constables remained on patrol duty within the Court compound as stated by the Returning Officer. Now, on 12th January one armed sentry died of a gun shot. After the death of the guard an enquiry was held by the police. The Circle Inspector, R.W. 1, Rabindra Narain Rakshit, who was present at the time of enquiry has been examined and he has proved the enquiry report. The Post-mortem examination report has been also admitted in evidence. It is abundantly clear beyond a shadow of doubt that the armed sentry posted on the south side in the compound near the guard barracks committed suicide. On the Petitioner's side it is merely suggested that the armed guard who died was posted on the southern verandah outside the Treasury room and he was on duty to guard the ballot box room as well. Such suggestion is not based on any evidence. There is a passage along the east of the sub-treasury room which leads to the big central hall sub-divided into two compartments by arches with openings at the centre. To the extreme north of the central hall is the Ejlal room of the S.D.O. where the ballot boxes were deposited. On the 13th January morning the Election Agent of Panchugopal Bhaduri, P.W. 7, Kamal Chatterjee and also P.W. 15, Manoranjan Hajra, a Communist candidate, who has been returned to the Assembly from Uttarpara Constituency, saw the Returning Officer in his chamber which is to the west of the ballot box room and asked for permission to see if the ballot boxes were in order. Manoranjan Babu says in his evidence that the Returning Officer informed him that everything was in proper order in his custody and no disturbance took place and so there was no reason for apprehension. Still Manoranjan Babu insisted that he should be allowed to have a look into the ballot boxes if they were in proper order. The Returning Officer informed him that he could on no account show the ballot boxes. This has been made a grievance and it is referred to as a circumstance in support of the arguments that in connivance with the Returning Officer the ballot boxes were tampered. The Returning Officer rightly refused to show the ballot boxes to one of the candidates of Uttarpara Constituency and to the polling agent of one of the candidates of Serampore Constituency. None of the other candidates of the four constituencies or their agents made any such prayer. The Respondent Jitendra Nath Lahiri says in his evidence that he was then away from Serampore. The Returning Officer could in no circumstances allow any inspection of the ballot boxes according to the provisions of the law before the time of counting. As already stated the Petitioner has gone further to suggest in the Election Petition that the Returning Officer was influenced by the President and the Secretary of the West Bengal Provincial Congress Committee in such matters. The petitioner did not even venture to adduce any evidence in support of this wild suggestion. In the cross-examination of the Returning Officer, Mr. Kushari, (R.W. 13) only question is asked whether he knew anything about the visit by Sri Atulya Ghose and Sri B. S. Nahar to Serampore. The Returning Officer denies any knowledge of such visit. The attempt to connect the death of the armed sentry with the tampering of the ballot boxes is too futile to deserve any notice. From the Returning Officer it has been obtained that there are no iron bars fitted to the windows of the Election Office room which is to the west of the central hall and also to the window on the

north side of Sub-divisional Officer's chamber. Questions have also been asked whether through the other doors of the Court building the central hall can be approached and if those doors are kept closed after office hours to prevent anybody to enter inside the court building. Answer has been given in the affirmative. Of course, Sub-divisional Officer does not personally inspect whether the doors are actually closed or not. His evidence is that nobody is supposed to enter inside the Court building after the Court hours. He makes it clear that all the doors of the ballot box room were securely locked up. A suggestion has been made that one could have access into the Court building through the windows not fitted with iron bars and might enter the ballot box room breaking open the door locks and tamper the ballot boxes. Such speculative suggestion hardly deserves any comment. There is no case made out anywhere that somebody entered inside the ballot box room breaking open any door and tampered the ballot boxes.

Under Rule 46(iii) "the Returning Officer shall allow the candidates and their election agents and counting agents present at the counting an opportunity to inspect the present at the counting an opportunity to inspect the ballot boxes and their seals for satisfying themselves that they are in order". Such opportunity was admittedly given in the present case before the counting of votes. On behalf of Panchugopal Bhaduri the election agent P.W. 7 Kamal Chatterjee and the Petitioner P.W. 19 Dinendra Nath Bhattacharyya as counting agent, entered inside the ballot box room and examined the ballot boxes. The Returning Officer deposes to the fact that the ballot boxes were inspected by all the persons entitled to do so and none raised any objection, and thereafter the ballot boxes were removed to the counting tables and counting was commenced. The election agent Kamal Chatterjee impressed the party seals on the ballot boxes before they were despatched from the polling booth at Chatra where he was present. His evidence about what he noticed on entering the ballot box room runs thus "On entering the ballot box room I noticed broken pieces of sealing wax scattered on the floor. I brought it to the notice of the Returning Officer. Lalit Mohan Bhattacharjee, counting agent of Panchugopal Nag and Manmathonath Ash, counting agent of Narendra Kumar Banerjee also brought it to the notice of the Returning Officer, but the Returning Officer ignored and trampled over the sealing wax which was found close to the ballot boxes". He then says, "That the sealing waxes were not loose but they stuck to the floor just as it does at the time of melting when it falls on the floor". He inspected every ballot box. He further says "We found the seals on some of the ballot boxes detached and some broken as well. The twines over which the seals were fixed were found loose on certain ballot boxes. We pointed out such loose seals of ballot boxes of Panchugopal Bhaduri to the Returning Officer. "No written objection was submitted inviting the notice of the Returning Officer as to the condition of the seals. The Petitioner corroborates saying that he noticed pieces of sealing wax lying on the floor in large quantities and they were brought to the notice of the Returning Officer who trampled the sealing wax and said that that was nothing. P.W. 13 Lalit Mohan Bhattacharjee who was one of the candidates and who acted as counting agent of the candidate, Panchugopal Nag, is an old man of 75. He could not inspect all the ballot boxes as the time allowed was short. He noticed broken seals and pieces of sealing wax scattered on the floor. He goes so far as to say that he took some of the broken pieces of sealing wax in his hand and watched them. He also noticed sealing wax stuck to the floor. P.W. 24 Manmotho Nath Ash the counting agent of the candidate Narendra Kumar Banerjee was present there. He noticed one or two seals partially broken. He was told by the Returning Officer that it might happen in transit when the ballot boxes were carried in vehicles. He only noticed sealing wax stuck to the floor. That being brought it to the notice of the Returning Officer, the latter said that that was nothing and no thought should be given to that. The respondent No. 1 has examined his Counting Agent, R.W. 6 Sivaprasanna Sarkar, a respectable Pleader of Serampore and also R.W. 2 Sudhir Kumar Choudhury, the Counting Agent of the candidate Kanallal Goswami. Their evidence is that no sealing wax was found on the floor, nor any defects in the seals of the ballot boxes were noticed and none made any complaint to the Returning Officer pointing out any such state of things. It is in evidence that from other constituencies the Communist candidates were returned. Apparently no such objection was contemplated even before the result of the election of Serampore Constituency was published and it became known that the Communist candidate whose success was expected by the party, was defeated. Rule 46(iv) of the Representation of the People Act, 1951, provides that if any ballot box is found by the Returning Officer to have been tampered with or destroyed or lost, the Returning Officer shall postpone the counting of votes and shall follow the procedure laid down in Section 58, which provides for fresh poll. The Returning Officer did not find any ballot box tampered and he had no occasion to take recourse to the provision in

Rule 46(iv). It is quite possible that some seals might have been broken during transit. The ballot boxes were kept in the Eklas room of the Sub-divisional Officer and they must have been handled when arranged as required under Rule 46(ii). If any sealing wax was found stuck to the floor it is not to be presumed that ballot boxes were tampered and re-sealed using fresh sealing wax. The ballot boxes were sealed with the seals of the candidates. It is idle to suggest that forged seals were procured in order to re-seal the ballot boxes. Agents of all the candidates inspected the ballot boxes and if they found any ballot box actually tampered, they could not remain silent observers. Written protest would certainly have been made and the matter would have been brought to the notice of the Election Commission if necessary. The story of tampering is absolutely unreliable and fantastic.

The removal of ballot papers from the boxes of other candidates to the boxes of Jitendra Nath Lahiri is another idle suggestion. In the same room there were ballot boxes of other constituencies as is clear from the evidence of the returned candidate Manoranjan Hajra and also from the Plan of the Court building. There was no objection in respect of the ballot boxes of other constituencies deposited in the same room. No question of any suspicion even can arise from the evidence that has been adduced. There are no circumstances from which any inference can be drawn that the ballot boxes were tampered and the ballot papers were removed from one box to another. This point is thus decided against the Petitioner.

(b) The counting was held in the Court building in the two compartments of the central hall and in the two side rooms on the east of the central hall. There were 35 counting tables and as many counting parties with leaders. Under Section 64 of the Representation of the People Act, 1951, each candidate, his election agent and his counting agent can remain present at the time of counting. On behalf of the Respondent Panchugopal Bhaduri his election agent Kamal Chatterjee (P.W. 7), and his counting agent the Petitioner, were both present. Their grievance is that the counting being held in 4 different rooms on 35 tables, it was not possible for them to supervise the counting properly. Under Rule 45 of the Representation of the People (Conduct of Elections and Election Petitions) Rule, 1951 the Returning Officer cannot allow any person to remain present at the time of counting of votes except such persons as he may appoint to assist him in counting the votes and such other persons as have a right to be present under Section 64. It has been argued further that not only the candidates' agents but also the Returning Officer himself could not properly supervise the counting at so many tables. Rule 46 does not require that it was necessary for the Returning Officer to have every ballot box opened and the papers sorted and counted in his immediate presence; otherwise the Returning Officer would be precluded almost entirely in taking any assistance by appointing assistants under Rule 45. All that Rule 46 demands is that the supervision of the Returning Officer should be sufficient to eliminate as far as possible, all charges of mistakes or false declaration of the result. Under Rule 46(i) all the ballot boxes shall first be counted and checked by the Returning Officer to satisfy himself that all the ballot boxes have been received and accounted for. Under Sub-Rule (ii) the ballot boxes are to be arranged candidate-wise.

Sub-rule (iii) gives an opportunity to the election agents and counting agents of candidates to inspect the ballot boxes to satisfy themselves that they were in order. Sub-rule (iv) which has already been discussed, lays down the procedure in case any ballot box be found to have been tampered or destroyed. After the Returning Officer becomes satisfied that the ballot boxes are in order the counting is commenced. Under Sub-rule (vii) the Returning Officer is to allow the candidates and their election agents and counting agents who may be present, reasonable opportunity to inspect all ballot papers which in the opinion of the Returning Officer are liable to be rejected but shall not allow them to handle those or any other ballot papers. If any candidate or his election agent or counting agent questions the correctness of the rejection of any ballot paper, the Returning Officer shall record briefly on such ballot paper the ground for its rejection.

The arrangement for counting on 35 different tables in four different adjacent rooms giving facilities to the candidates and their agents to move about and supervise the work of counting, was quite in order and there was no infringement of any of the provisions of the law. It has been argued that a written objection was filed on behalf of Panchugopal Bhaduri for arranging the counting on 35 different tables in four rooms. The Returning Officer does not admit that any such petition of objection was brought to his notice or he directed to file the same with his Head Clerk. A copy of a petition alleged to have been filed by Kamal Chatterjee at the time of counting has been produced. The original said to have been filed with the Head Clerk of the S.D.O. was called for but no such document could be traced. However, such an objection petitions if it was at all filed did not improve

matters. There could not be any ground for postponement of counting awaiting orders from the Election Commission as stated in the copy, Ext. 1 filed. The Counting Agents R.W. 2 Sudhir Kumar Chowdhury and R.W. 6 Sivaprasanna Sarkar corroborating the Returning Officer, say that no such verbal or written objection was made at the time of counting. Under the present law, not more than one counting agent could be appointed or be allowed to remain present at the time of counting. Before the introduction of the present system of voting by depositing ballot papers in different ballot boxes assigned to the different candidates, under the old law one ballot paper was issued containing the names of all the candidates nominated for election in respect of each constituency. Such ballot paper was deposited by the voter putting cross-mark against the name of the candidate of his choice into one ballot box allotted to each booth for each constituency. At the time of counting of votes of the different booths necessity might arise for appointment of more counting agents to watch if the votes cast in favour of each candidate were properly and correctly counted. But even under Rule 14(6) of the old Electoral Rules, besides the candidate and his election agent, one representative of each candidate authorised by the candidate had the right to be present at the time of counting. Practically the counting agent is to be given reasonable facilities for overseeing the ballot paper which in the opinion of the Returning Officer is liable to be rejected. There is no complaint that any such facility was not given. We therefore hold that there was no infringement of any of the provisions of the law relating to the counting of votes.

(c) In paragraph 2 of the Election Petition it has been stated that counting assistants Kedareshwar Banerjee, Kalachand Bandopadhyay and Dulal Bandopadhyay who acted as counting assistants actively canvassed for votes on behalf of the Respondent Jitendra Nath Lahiri during the election and that Mr. S. K. Das Gupta, Sub-Magistrate, who was appointed as Officer-in-Charge of the Checking Party in the counting of votes is an intimate friend and a tenant of the Respondent Jitendra Nath Lahiri. All these gentlemen named are Government Officers. Jitendra Nath Lahiri emphatically denies that any of the counting assistants, Kedareshwar Banerjee, Kalachand Bandopadhyay and Dulal Bandopadhyay ever worked as his canvasser. Kedareshwar Banerjee is a Sub-Registrar. The Petitioner noticed him sitting on the chair of the Sub-Registrar, but he is not prepared to admit that he held such post. Kalachand Bandopadhyay is a Lecturer in the Government Weaving Institute. It is in evidence that he is suffering from high blood pressure and he does not move out except for the purpose of attending to his duties as a Lecturer. Dulal Bandopadhyay R.W. 14, is the District Savings Organiser under the Finance Department of the Government of India. He worked as counting assistant being deputed to perform such duty by his Department. He denies that he or his brother Kalachand Bandopadhyay ever canvassed for the Respondent Jitendra Nath Lahiri. The story of canvassing by these three Government servants on behalf of Jitendra Nath Lahiri is wholly unreliable.

Mr. S. K. Das Gupta, Sub-Magistrate, was admittedly a tenant of the Respondent Jitendra Nath Lahiri. Jiten Babu's evidence is that Mr. Das Gupta is a man of very reserved temperament and he never had any intimacy with him. The petitioner wants to establish his case by saying that he saw Mr. Das Gupta once in Jiten Babu's house some 7 or 8 months before election and on another occasion he saw Mr. Das Gupta in Jiten Babu's motor car. The fact is however denied by Jiten Babu. Rule 45(2) provides "that no person who has been employed by or on behalf of, or has been otherwise working for, a candidate in or about the election shall be appointed to assist the Returning Officer in counting the votes." Considering the evidence we cannot hold that either Mr. S. K. Das Gupta or any of the counting assistants Kedareshwar Banerjee, Kalachand Banerjee and Dulal Bandopadhyay were ineligible for appointment to assist the Returning Officer in counting the votes. This objection is frivolous.

(d) The allegation that the checking of the serial numbers of ballot papers were abruptly stopped while the votes of Jitendra Nath Lahiri were counted has been denied by the Returning Officer. The procedure followed by the Returning Officer was as follows—"The numbers of ballot papers issued, were kept in front of the counting assistants and whenever they counted the ballot papers they referred to the serial numbers in all cases. Checking was continued throughout the whole time of counting and it was not stopped at any stage. The ballot papers of all the candidates were checked with reference to the serial numbers." There is no reason to disbelieve the Returning Officer on this point. The Counting Agents R.W. 2 Sudhir Kumar Chowdhury and R.W. 6 Sivaprasanna Sarkar also corroborate him. The Communist candidates were returned from other constituencies and there was no such complaint. The Returning Officer could not have any reason to stop checking the serial numbers of ballot papers in the case of Serampore constituency. The Tribunal is unable to believe this allegation.

(e) The allegation that many forged ballot papers were found but the Returning Officer refused to reject them inspite of repeated requests by the Election Agent of the Respondent Panchugopal Bhaduri is not supported by any evidence. The new story is now introduced that certain ballot papers with deeper shade of colour were noticed at the time of counting and they were not rejected in spite of objection by Kamal Chatterjee, the Election Agent of Panchugopal Bhaduri. If there had been any such incident, the Election Petition could not remain silent on the point. Kamal Chatterjee mentions the name of P.W. 13, Lalit Mohan Bhattacharjee, Counting Agent of Panchugopal Nag as one of those who was present when objection was taken before the Returning Officer noticing the difference of colour in the ballot papers found in the boxes of Jitendra Nath Lahiri. The old gentleman Lalit Mohan Bhattacharjee has not however corroborated this story. He is not even asked any question on this point. R.W. 2, Sudhir Kumar Chowdhury who was present during the counting of votes as Counting Agent of the candidate Kanallal Goswami, proves that no difference in colour of the ballot papers of any candidate was noticed and no objection was raised on that score by the Election Agent of Panchugopal Bhaduri or by anybody else on behalf of any candidate. R.W. 6, Sivaprasanna Senkar, Pleader Serampore the counting agent of Jitendra Nath Lahiri also states that no different of colour in ballot papers was noticed and no objection was raised by anybody. The Returning Officer denies the story of bringing to his notice any difference in the colour of the ballot papers brought out from the ballot boxes of Jitendra Nath Lahiri. The allegation of noticing ballot papers of a different colour in the ballot boxes of Jitendra Nath Lahiri is apparently a myth. The Election Petition was left blank and attempt has been made to fish out some possible material to fill up such blank which is undoubtedly an abuse of procedure as noticed in the Saharanpur Case reported in Khanna, Vol. I, p-117 (119). Such objection cannot be entertained. In Paragraph 18 of the Election Petition it has been stated that it is a fit case for a recount being directed by the Tribunal. The story of ballot papers of different colours has apparently been introduced to make out a case for recount. Such prayer for recount could be made under proviso to Rule 48 of the Representation of People (Conduct of Election and Election Petitions) Rules, 1951 at the proper stage. No such steps were taken, evidently because there was no ground for making such prayer. We cannot accept the plea that ballot papers of different varieties were found in the ballot boxes of Jitendra Nath Lahiri and, as such there cannot arise any question of recount of votes.

In paragraph 21 of the Election Petition there is a general complaint that on account of improper reception of void votes cast in favour of Respondent Jitendra Nath Lahiri and for improper refusal of valid votes cast in favour of Panchugopal Bhaduri, the result of the election has been materially affected. In view of the discussion of the evidence already made by us, we cannot hold that there was any improper reception of void votes which ought not to have been received. There is no evidence whatsoever that there was refusal to accept any valid vote cast in favour of the respondent Panchugopal Bhaduri. The allegation has no substance.

The Tribunal therefore holds that the result of the election has not been materially affected by improper reception of any vote which is void or by any non-compliance with the provisions of the Constitution or of the Representation of the People Act, 1951 within the meaning of section 100(2) (c) of the Representation of the People Act, 1951.

Issue No. 5.—The Tribunal holds that there was no major or minor corrupt practice of undue influence; nor there was any coercion or intimidation interfering with the free exercise of the electoral rights of the voters. The result of the election has not been materially affected on account of any major or minor corrupt practice or on account of reception of any vote which is void or by any non-compliance with the provisions of the law. The prayer of the petitioner for declaration under section 101(b) of the Representation of the People Act, 1951 that the respondent Panchugopal Bhaduri has been duly elected but for the votes obtained by Jitendra Nath Lahiri by corrupt or illegal practices is wholly untenable in view of the findings of the Tribunal. The Election Petition must accordingly be dismissed. There has been a protracted trial on account of numerous allegations which could not be substantiated. The returned candidate Jitendra Nath Lahiri has been unduly much harassed. The petitioner should therefore be made liable for the costs of the respondent Jitendra Nath Lahiri. The Tribunal allows Rs. 400/- for costs of the Respondent No. 1 against the Petitioner.

ORDER.

The Election Petition No. 220 of 1952 presented by the Petitioner Dinendra Nath Bhattacharya calling into question the election of the Respondent No. 1 Jitendra

Nath Lahiri from the Serampore Assembly Constituency, West Bengal, be dismissed with costs. The Petitioner Dinendra Nath Bhattacharya do pay Rs. 400/- for cost to the Respondent No. 1. Jitendra Nath Lahiri.
Dictated by me and corrected.

(Sd.) S. C. RAY CHAUDHURI, *Chairman.*

Election Tribunal.

(Sd.) S. C. RAY CHAUDHURI, *Chairman,*
Election Tribunal.

(Sd.) M. N. GAN, *Member,*
Election Tribunal.

(Sd.) SUDHIR KUMAR BHOSÉ, *Member,*
Election Tribunal.

The 24th March, 1953.

[No. 19/220/52-Elec.III.]

S.R.O. 633.—WHEREAS the election of Shrimati Arutla Kamal Devi, as a member of the Legislative Assembly of the State of Hyderabad from the Alir Constituency of that Assembly has been called in question by an election petition (Election Petition No. 290 of 1952 before the Election Commission) duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Kancherla Ramkrishna Reddy s/o Shri Ramreddy, Nalgonda (Hyderabad State);

AND WHEREAS the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of section 86 of the said Act for the trial of the said petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Election Commission;

NOW, THEREFORE, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said Order.

BEFORE THE ELECTION TRIBUNAL, SECUNDERABAD-DN.

Tuesday, the 24th day of March, 1953.

PRESENT:

1. Shri S. Taki Bilgrami, Bar-at-Law, Chairman, Election Tribunal.
 2. Shri N. Kumaravva, H. C. S., Member of the Election Tribunal.
 3. Shri Srinivasa Raghavachari, B.A., B.L. Member of the Election Tribunal.
- ELECTION PETITION No. 3 of 1952.

Kancherla Ramkrishna Reddy, son of Ramreddy, Caste Reddy, aged 34 years, residing at Nalgonda.—*Petitioner.*

Versus.

Arutla Kamala Devi, wife of Arutla Ramchandra Reddy, caste Reddy, aged 30 years, residing at Kolampak, Taluq Bhonglr, District Nalgonda, Hyderabad-Dn.—*Respondent.*

This petition coming on 13th September, 1952, 3rd October, 1952, 20th October, 1952, 1st November, 1952, 25th November, 1952, 27th November, 1952, 18th December, 1952 to 20th December, 1952, 22nd December, 1952 to 24th December, 1952, 26th December, 1952, 10th January, 1953, 7th February, 1953, 20th February, 1953, 24th February, 1953, 10th March, 1953 and 20th March, 1953, before us, S. Taki Bilgrami, Bar-at-Law, Chairman, Election Tribunal, N. Kumaravva, H. C. S. Member of the Election Tribunal, and Srinivasa Raghava Charl, B.A., B.L., Member of the Election Tribunal, in the presence of Shri B. V. Subbarayudu, M.A., LL.B., Advocate, for the petitioner and of Shri Saxena for respondent, and having stood over for consideration till this day the Tribunal passed the following:—

ORDER.

The petitioner Kancherla Ramkrishna Reddy was one of the candidates for membership to the Hyderabad Legislative Assembly from the Alir Constituency. He was defeated by the respondent Arutla Kamala Devi, a candidate of the People's Democratic Front. In his petition he seeks to have the latter's election declared void and prays that he be declared duly elected. The ground on which he bases his petition is that the respondent was not an elector and her name was not on the electoral roll at the time fixed for submitting nomination papers; that no direction was issued by the revising authorities till then, and if issued it cannot be deemed that her name was on the roll from the time of the issue of this

direction because R. 20(3) which provides for this is void and *ultra vires* being contrary to the provisions of S. 25 of R.P. Act of 1950. The nomination paper was defective as the serial number in the column concerned was left blank. The respondent's inability to duly fill in the said column cannot be a good ground for condoning this defect. The nomination paper ought to have been rejected for these defects and the respondent ought not to have been allowed to contest the election.

2. The respondent's contention is that she had applied for the inclusion of her name in the Electoral Roll in good time in accordance with the provisions of Law and the Election Commission had validly issued direction to include her name on 15th November, 1951. This direction is tantamount to the amendment of the roll and consequently she was the elector on 15th November, 1951, and entitled to stand as candidate for election. No doubt she had left the serial number blank. But she could not fill it up under the circumstances. At the worst this was a technical defect which was rightly ignored by the Returning Officer the respondent having furnished necessary particulars before the time for scrutiny. The respondent's further contention is that the petitioner has not joined as parties all the duly nominated candidates in contravention of the mandatory provisions of Section 82 of R.P. Act and hence this petition should be rejected without further inquiry on that account.

3. The following issues were framed:—

- (1) Were the candidates who were duly nominated but who withdrew later, necessary parties and the petition should be rejected for their non-joinder?
- (2) Were the nomination papers filed for the respondent defective because of non-mention of the details required in column 7 and 8 of these nomination papers and for this reason they were invalid and should have been rejected?
- (3) Was the name of respondent on the Electoral Roll on the date and time fixed for submitting nomination paper and what is the effect if the name was not there?
- (4) Were directions for inclusion of the name of respondent issued before the date and time fixed for submitting the nomination paper and whether this is sufficient?
- (5) Is the petition time barred?
- (6) Whether the order and direction of the Election Commissioner, India, purporting to include the name of the respondent in the Electoral Roll under Rule 20(2) of the Representation of People (Preparation of Electoral Rolls) Rule 1950 is not void, not being in conformity with the provisions of Section 25 of R.P. Act 1950?
- (6) (a) Whether Rule 20 of the said Rules under which a direction purports to be given is not *ultra vires* of the power of the rule making body in view of the provisions of Section 25 of R.P. Act 1950?
- (7) Whether the improper acceptance of nomination has materially affected the result of the election?

Issue No. 1.—

4. Admittedly there were two candidates Laxmi Narayan and Chandra Gupta whose nomination papers were accepted by the Returning Officer but who had withdrawn thereafter within the prescribed time. The point for consideration therefore is whether these candidates are the necessary parties to the petition. Section 82 of the Representation of People's Act in this regard runs thus:—

"A petitioner shall join as respondents to his petition all the candidates who ever duly nominated at the election other than himself if he was so nominated."

This Section enjoins that all the duly nominated candidates at the election except the petitioner himself should be made respondents to the petition. The term "duly nominated" is not defined either in the Act or the Rules. We find in the Act terms "nominated", "duly nominated" and "validly nominated". The term "validly nominated candidate" is defined in the Representation of the People (conduct of Elections and Election Petitions) Rules 1951, Section 2(f) as "a candidate who has been duly nominated and has not withdrawn his candidature in the manner and within the time specified in Sub-Section (1) of Section 37 or in that sub-section (4) of Section 39 as the case may be". By this it is clear that the term "duly nominated candidate" is not a synonym of "validly nominated candidate".

and can include candidates who have withdrawn. It is clear that if in Section 82 R.P. Act only the words "duly nominated" were used candidates who have withdrawn would have been necessary parties. But the term is qualified by the words "at the election". The question is do these words effect the position in this regard. The learned Counsel for the respondent relies on certain observations made in "N. P. Punnuswamy Vs. The Returning Officer" 1952 Supreme Court 64 and in an Election Case "Maharaja Sir Narendra Chandra Nandy Vs. Pranesh Chandra Mitter" Hammonds P. 545 at page 549, and also in an English Case reported in 2 Power Rodewell and Dewas Election Cases (1938-41) at page 308—in which Election has been defined as a continuous process starting with the nomination and ending in election. This may be, but it does not throw any light, on the expression "at the election" with which we are concerned. The word "at" can only be used with reference to a certain stage, or moment, and having regard to the context in Section 82 can only mean the stage of polls. Attaching the meaning suggested by the respondent's counsel to these qualifying words will mean that they are redundant. That the words "duly nominated" would have served the purpose as well and that the term "duly nominated" and "duly nominated at the election" are synonymous. Now no rule of interpretation is better established, than the one which lays down, that no words used in a statute can be taken as redundant or superfluous. It is argued that if this term is taken to mean candidates contesting the election it will be synonymous with the term "validly nominated candidate", as defined in the rule, and the same objection will apply; we do not agree. A validly nominated candidate is defined as one who does not withdraw within time fixed, it is not necessary that he should contest the election. Circumstances are conceivable and possible in which a candidate who does not withdraw in time fixed, may fail to, or may be prevented from going to the polls. The legislature when it used the expression "duly nominated at the election" and not "validly nominated" candidate evidently wanted to make it quite clear that only candidates actually contesting the Election after due nomination are to be necessary parties, and not merely those who have not withdrawn. Some Election Cases of U.P. and Punjab like "Benares cum Mirzapur Cities" (Sen & Poddar 176) and "Ambala and Simla" (Sen & Poddar 6) and "Hoshiarpur West" (Sen and Poddar 396) and "Karnal South" (Sen and Poddar 438) are relied upon in which it was laid down that failure to implead all the nominated candidates is fatal to a petition in which seat is claimed. These cases were decided under Rule 11 in Punjab and Rule 121 in U.P. of then existing Electoral Rules there which made it necessary to join all the nominated candidates, when a seat was claimed by the petitioner. In Bihar a different view was taken in "Shahbad M.R. 1946" (Sen and Poddar 746). The above U.P. cases were distinguished on the grounds that under U.P. Rules the list of nominated candidates is prepared before the period of withdrawal whereas in Bihar after that period is over. Under the present Rules with which we are concerned, the list is published after such period is over. If at all we can follow these cases under the old rules we should follow the Bihar case. Our view is supported by a recent decision of Bombay High Court "Sitaram Hira Chand Birla Vs. Yograj Singh Shankar Singh Parchar" (S. C. Application No. 2017 of 1952) in which a division bench of that High Court consisting of C. J. Chagla and Dixit J., have held *inter alia* that a candidate who has withdrawn is not a necessary party. We, therefore, over-rule this objection, and decide this issue in favour of the petitioner. In our opinion it is not necessary to join a candidate who has withdrawn.

Issue No. 2—

5. It is objected by the petitioner that serial number in columns 7 and 8 of the nomination form as required by Rule 4 and form in Sch. II is not mentioned, and therefore the nomination paper of the respondent was invalid. We do not agree. The intimation that the respondent's name may be included in the electoral roll was received on the day the nomination paper was filed. There was no serial number given to her till then. Insistence on serial number being given in such cases will defeat the object of R.20(3) which provides that the roll will be deemed to have been revised when order for its revision is issued by the Election Commissioner. Apart from that, as it has been held in so many cases the object of details to be mentioned in nomination papers is to ensure the identity and eligibility of the candidate, omissions, discrepancies, and irregularities, which do not affect this, do not matter. See Anglo Indian Court Punjab (1947) Sen and Poddar page 883 at p. 887 and also Anglo Indian Court Punjab (1946) Sen and Poddar Page 86 at page 88 *et seq.* In this latter case it was held that omission to describe sub-division is not fatal to a nomination paper. A similar view was taken in "Waswa Sing Vs. Warayan Singh and others" Doabia I.E.P. Vol. II, page 263 and "Gurbuksh Singh Vs. Baldeo Singh" Doabia I.E.P. Vol. I page 13 at page 18. It is well settled that the provisions relating to filling up of nomination papers are not absolute and need not, therefore, be fulfilled exactly. They are merely

directory and it is sufficient if they are complied with substantially. The criterion of substantial compliance is the establishment of the eligibility and identity of the candidates to the satisfaction of the Returning Officer. In the present case there can be no doubts regarding that. We think, therefore, that the Returning Officer was right in refusing to reject the respondent's nomination on this ground, and decide this issue in favour of the respondent.

6. Issues Nos. 3 and 4 being issues of fact we shall decide them last.

Issue No. 5.—

7. The petition was presented on 22nd May 1952 and the name of the respondent was published in the Gazette on 8th May 1952. The petition is, therefore, within time under R. 119 which fixes 14 days time after such publication for submitting petitions. This objection was not pressed and is overruled, and this issue decided in favour of the petitioner.

Issue Nos. 6 and 6 (a).—

8. The petitioner's pleader relies on the following words of S. 25 (a) of R.P. Act 1950.

"And when a list containing any additions to omissions from, or alterations in the electoral roll as a result of such revision has been finally published in the prescribed manner the electoral roll shall be deemed to have been revised accordingly".

And argues that R. 20(3) of R.P. Rules of 1950 which provides that the electoral roll shall be deemed to have been revised when the direction is issued by the Election Commission is void being contrary to the provisions of the above section of the Act. There can be no doubt that Rules framed under an Act if they contravene the provisions of the Act or go beyond the scope permitted are void and *ultra vires*. The question is do the provisions of the above Rule do so. The earlier portion of Section 25(a) gives power to the Election Commission "to direct the revision in the prescribed manner". The term "prescribed" has been defined in S. 2 (H) "as prescribed by the rules under this Act". It is permitted, therefore, to the Commission to prescribe the manner of revision. The Section 28(1) of R.P. Act (1950) provides that the Central Government may after consulting the Election Commission by notification in the official gazette make rules to carry out the purposes of this Act. Section 28(2) of R.P. Act 1950 lays down that "such rules may provide for all or any of the following matters" among which is the *final publication* of electoral roll in Cl. (G) and in Cl. (H) revision or correction of the electoral roll under Section 25 "and the *final publication of the list referred in that section*". In view of these provisions it is certainly within the powers conferred by this section on the Central Government, to frame a rule to the effect, that issue of order of revision by the Election Commission will have the effect of revision and final publication. The Central Government is here providing a mode of revision and publication for which it has been expressly empowered, and this rule does not purport to lay down as contended that the final publication as provided for under Section 25 is not necessary. We, therefore, decide both these issues against the petitioner.

Issues Nos. 2 and 3.—

9. It will be convenient to decide these two issues together as their subject matter is the same. So far as issue No. 3 is concerned it is clear from the evidence of the Chief Electoral Officer, P.W. 2, that the wire for including the name of the respondent did not arrive till late at night on 15th November 1951, and it follows that the name was not actually on the roll at the time fixed for filing the nomination papers *viz.*, 3 P.M. The first portion of the issue No. 3, therefore, is decided in favour of the petitioner. What will be the effect of that will depend on the decision of issue No. 4. We shall now proceed to consider that issue. The legal position is quite clear. Rule 20(2) of R.P. Rules of 1950 provides that the Election Commission can amend the Electoral Roll and order inclusion of the name of person found entitled thereto. Sub-Rule (3) provides that the electoral roll will be deemed to have been revised when any direction is issued under Sub-Rule (2). If it is found therefore, in this case, that the direction of the inclusion of the respondent's name by the Election Commission was issued before 3 P.M. on 15th November 1951, the respondent at that time will be deemed to be an elector, and her nomination will be valid, if not the acceptance of the nomination paper will be deemed improper.

10. Three witnesses including himself were examined by the petitioner, in this behalf. P.W. 1 is the petitioner himself who says that the Chief Election Commissioner was not in Delhi on 15th November 1951 but in Bombay or Rajasthan, and a wireless message from him directing inclusion of the respondent's name was not produced by the respondent till 17th November 1951 the date fixed for scrutiny. He says that he knows that till 4-30 P.M. or 5 P.M. on 15th November

1951 no message from Election Commission was received, for President of Nalgonda Congress Committee had informed him at the time that the P.D.F. people were still telephoning to Delhi for inclusion of the respondent's name, and no reply has been received. He was told later that a message from Delhi was received that the Election Commissioner had gone on tour to Rajasthan and Bombay. P.W. 2 is Mr. Krishna Swamy Iyengar who was the Chief Electoral Officer at the time of this election. He says that he received the telegram including the name of the respondent late at night on 15th November 1951, and the next morning he communicated this to the Returning Officer concerned, and Mr. Saxena the respondent's pleader. He identified the original of Ex. R-3 a wireless message sent by him and Ex-R-4 his communication to Mr. Saxena. He also saw the inward diary, and said that date of the receipt of wire shown therein is 16th November 1951, because the wire was received late at night of 15th November 1951. He says that at about 4 or 5 P.M. on 15th November 1951 he was able to contact the Secretary of the Election Commissioner in Bombay who informed him that the Election Commissioner has directed that names of certain applicants may be included, and that he is sending a telegram intimating the same. P.W. 3 says that he was an Account Officer in the Office of the Chief Electoral Officer at Hyderabad on 15th November 1951. He says that he telephoned to Bombay requesting the Secretary of the Election Commissioner, to communicate the names of the candidates regarding inclusion of whose names sanction was accorded. He said that he will look into the papers and communicate by telegram. He says that he first telephoned to the Chief Secretary Bombay at 4-30 P.M. to find out where the Secretary of the Election Commissioner was residing and after finding that out contacted the Secretary. The wire received from Bombay for inclusion of the respondent's name was produced; unfortunately the time of despatch of the message is not shown therein. The time, it was received is given which is 10-38 P.M. The Chief Election Commissioner Shri S. Sen's statement was recorded on commission in Delhi. He says that recommendation for the inclusion of the name of the respondent was sent by the Chief Election Officer by a telegram dated 13th November 1951. On 14th November 1951 the records of these cases were sent by the Delhi Office by air-packet to the Secretary at Bombay. He does not remember when this order for inclusion of the respondent's name was passed, or issued. He says that he sent the telegram at 8 P.M. and the orders must have been passed before that. He is unable to say whether these orders were authenticated at Delhi or at Bombay. On 15th November 1951, he says he was in Rajasthan, and he left Rajasthan by morning plane, and arrived at Bombay at 1-20 P.M. The telephone call was received from Hyderabad in the afternoon or early in the evening, in respect of certain applications for inclusion of names. He says that he cannot recall the exact hour when the call was received. The evidence of the first three witnesses is that no communications were received till mid-night of 15th November 1951 and that a telephone call was given at about 5 P.M. to find out whether the names of the respondent and other P.D.F. candidates were included in the roll or not. Since the evidence of the first three witnesses was not definite as to the time of the issue of the order which it was our object to find out, and we were reluctant to decide the case on conjecture, we gave further time to the petitioner to examine the Chief Election Commissioner on commission in Delhi hoping that his evidence will throw some light on the matter. Unfortunately there seems to be no record of the exact time at which these orders were issued. The Commissioner has to speak by his memory, and he does not seem to remember the exact time. Mr. Subbarayadu, for the petitioner argues that one thing is certain, and that is that these orders were not issued in Delhi, because the recommendation for inclusion of the names did not reach Delhi till 14th November 1951 when the Chief Election Commissioner was then away in Rajasthan. The papers were sent to him on the 15th November 1951 to Bombay. He did not arrive in Bombay till 1-20 P.M. and did not go to his office till 4 P.M. It is, therefore, obvious that he could not have issued order for inclusion of these names till 4 P.M. and this settles the matter. We do not agree. The air-packet was addressed not to the office, but to his camp at Bombay, and it is quite possible that he might have ordered the inclusion of the name before going to his office, and it is also possible that he did-so before 3 P.M. Besides that it is contended that if the orders were so recently passed he would have remembered it and would have said in response to the telephone call that the names were included, instead of saying that he will look up the paper and reply. It must be remembered that the contact on telephone was made not with the Chief Election Officer but with the Secretary who must have authenticated many orders of this nature. It was not surprising therefore that when enquiries were made regarding the inclusion of certain names in a particular constituency he was unable to give information orally, without looking into the papers. We, therefore, think that this by itself does not necessarily lead to the conclusion that the orders were not passed by 3 P.M. Mr. Subbarayadu also relies on the statement made by the Chief Election Commissioner that the

orders must have been passed before 8 P.M. He says that what the Chief Election Commissioner obviously meant by this, is that these orders were passed round about that time. We are unable to agree, because the Chief Election Commissioner also says that he is not certain that the order was passed before Sundown, or after, or whether it was authenticated in Delhi or Bombay. Taking the whole of his statement into consideration it appears that the time of the issue of this order has completely escaped his memory, and he is unable to give any definite information regarding the matter. There are also circumstances present which tend to show that the orders were passed before he reached the office at 4 P.M. and possibly before 3 P.M., because the papers were marked urgent and they were addressed to his camp which he must have received immediately on his arrival at the camp before 3 P.M. and for all we know he might have passed the orders immediately. And since there might have been many orders of this nature passed, he was unable to say when the telephone call was received, whether the name of Shrimati Arutala Kamala Devi and other candidates from Hyderabad State were included or not. He also says in his statement that Shrimati Kamala Devi became a voter by virtue of this order dated 15th November 1951 and although he does not remember it now, he must have known at the time of the passing of the order what was the last date for filing a nomination paper. It will be presumed that he knew the time at which it was necessary to pass the order in order to render the nomination valid, and he must have passed these orders before that time. After going carefully through the evidence, we find that the time of the issue of the order is uncertain. It is not possible by looking into the statement of any of these witnesses to say with any degree of certainty, as to whether these orders were passed before 3 P.M. on 15th November 1951 or not. The question is that in such a case what is the legal presumption. We think that the presumption under Section 114 (e) of the Evidence Act will be in favour of the regularity of the official acts and orders, and it will be presumed that all the things that were necessary for making the order valid were done, and it was passed at a time when it would be effective. See in this regard 1949 Patna page 369 "Ishwari Singh Vs. Province of Bihar". In which the order in question was a Government order which the petitioner was seeking to impeach on the ground that it was not properly authenticated. It was held that it will be presumed under Section 114 (e) of the Evidence Act that the order was properly authenticated and was issued by the order of the Governor, and all the formalities necessary for making that order valid were complied with. And it lay on the party who wanted to impeach that order on the ground of any irregularity to prove it. In another case 1948 Bombay page 156 "Emperor Vs. Sadhuram Kasnath" it was held that in the case of warrant issued under the Bombay Province of Gambling Act it will be presumed under Section 114 (e) that the officer issuing the warrant had performed his duty correctly, and if this presumption is not rebutted the warrant cannot be held to be invalid. See also 1947 All. page 105 in which it was held that manner of publication of an order in the Official Gazette should be presumed to have been considered as sufficient by the authorities concerned, though there may be no proof regarding that on the record. It was for the party who wishes to get this order declared invalid to prove that the necessary formalities were not complied with. Another case in point is 223 Indian Cases page 263 "Mahadev Prashad Vs. Emperor". In which it was held that when an order passed by the Central or Provincial Government is published in the Official Gazette, it must be presumed that the authorities while publishing the order complied with all the necessary formalities for making it valid, and that they were aware of all the provisions of law which lay down what such necessary formalities were. See also 1932 Madras page 508, in which a similar view was held regarding the publication of an order by the Municipal Board. See also 35 Calcutta page 141 "Aprurba Krishna Vs. Emperor". In the present case the presumption will be that the Chief Election Commissioner and the authorities issuing the order knew at what time the order had to be issued to render it valid, and effective, and they issued it before such time. The Chief Election Commissioner himself says that the respondent became an elector on the date fixed for the filing of the nomination paper, and that he was aware at the time of passing the order what was the date fixed. It is not fair to allow any party to impeach this order after a considerable length of time and permit him to take the advantage of the fact that the authorities passing the order do not remember the exact time at which they did so. If the petitioner wants to set aside the election on the ground that the order was ineffective, because it was not passed in time, he must by some definite evidence prove his allegation, which in this case he has failed to do. Mr. Subbaravadu for the petitioner says that the issue framed is such that the burden of proof is thrown on the respondent, and therefore, the burden lay on her, and if she has failed to prove that the order was passed in time it must be held that her nomination was invalid. We do not agree. Much importance cannot be attached to the question of burden of proof once the evidence has been led by both the parties. All that we have got to see now is the evidence on record,

and to draw a proper inference there-from. See in this regard 43 Madras page 567 and 1942 Privy Council page 93. Even if the burden was thrown wrongly on the respondent, she is entitled to say that she relies on this presumption and does not want to produce any evidence which she actually did. It does not appear nor is it contended on behalf of the petitioner that he was misled by the issue, and did not produce all the evidence he would otherwise have done, and thereby his case was prejudiced. Ample opportunity was given to him and he produced the best evidence possible under the circumstances. But unfortunately it is uncertain from this evidence as to whether the order was not passed before 3 P.M. on 15th November 1951, with the result that the presumption under Section 114 (e) of the Evidence Act will prevail and it will be presumed that it was passed before 3 P.M. on that date, and the acceptance of the nomination papers was valid, and that the respondent Shrimati Arutala Kamala Devi was on that date an elector. It must be remembered also that as a general rule it is the duty of the courts to up-hold the law by sustaining elections thereunder that have resulted in full and fair expression of the public will. All provisions of Election Law are mandatory if enforcement is sought before the election in a direct proceeding for that purpose; but after election should be held directory only in support of the result. An election should only be set aside if a strong and clear case is made out against it and not otherwise. In this regard an irregular acceptance of nomination papers stands on a different footing from an irregular rejection. A strict view should be taken in the latter case and a more lenient one in the former. We, therefore, decide this issue also in favour of the respondent as a result of which the petition fails.

11. As the petitioner was not aware of the time at which the order was issued, and the matter was doubtful, and he had a fairly reasonable ground for filing the petition, we do not think that it will be fair to burden him with costs. As it was held in "Monghyr North M.R." 1937 Sen & Poddar page 549 at page 563 that when there are reasonable grounds for filing a petition the petitioner should not be made to pay the costs even if the petition is dismissed.

12. In conclusion we dismiss this petition, and declare that the election of the respondent Shrimati Arutala Kamala Devi was valid. The parties to bear their own costs.

13. Pronounced by us in open court this 24th day of March 1953.

(Sd.) S. TAKI BILGHAMI, *Chairman.*

(Sd.) N. KUMARAYYA, *Member.*

(Sd.) K. SRINIVASA. RAGHAVACHARI, *Member.*

[No. 19/290/52-Elec.III.]

By Order,

P. R. KRISHNAMURTHY, *Asstt. Secy.*